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HAGAH LAPOR RELATIONS BOARD

Attorneys for Director, Department of Labor and Industrial Relations

## HAWAI'I LABOR RELATIONS BOARD

#### STATE OF HAWAI'I

In the Matter of DIRECTOR,	) CASE NO. OSH 2010-7
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, . Complainant,	) ) STIPULATION AND SETTLEMENT ) AGREEMENT; EXHIBIT A; APPROVAL ) AND ORDER )
vs.	) )
VOLCANO ORCHIDS, INC.,	) )
Respondent.	) )

## STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director, Department of Labor and Industrial Relations ("Director") and Respondent VOLCANO ORCHIDS, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawai'i Labor Relations Board ("Board") stipulate and agree as follows:

On or about December 15, 2009 to January 14, 2010, the Director, by and through the State of Hawai'i's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 2829 Awaawaloa Street #C, Honolulu, Hawai'i' 96819.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on February 3, 2010 ("Citation") to Respondent alleging violations of the Hawai'i Occupational Safety and Health Standards and assessed an aggregate penalty of \$3,450.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

- 1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawai'i Revised Statutes ("HRS").
- 2. At all relevant times, Respondent maintained a workplace at 2829 Awaawaloa Street #C, Honolulu, Hawai'i' 96819.
- 3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirement of HRS chapter 396, the Hawai'i Occupational Safety and Health Law.
- 4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawai'i Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH not more than ten (10) days after this Stipulation and Settlement Agreement ("Agreement") is filed; failure to timely do so may result in additional penalties or follow up inspections.
- 5. The violations and corresponding characterizations as stated in the Citation are affirmed. *See* Exhibit A.
  - 6. The Director reduces the aggregate penalty from \$3,450.00 to \$3,105.00,

which Respondent shall pay in full to the Director of Budget and Finance not more than ten (10) days after this Agreement is filed; Respondent shall send its payment to the Director's attorneys.

- 7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.
- 8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).
- 9. Respondent shall continue to comply with HRS chapter 396, the Hawai'i Occupational Safety and Health Law, and the related rules.
- 10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawai'i Occupational Safety and Health Law, or the related rules.

11. The Parties agree that upon the approval of this Agreement by the Board, the Board shall dismiss this case and Respondent's appeal.

VOLCANO/ORCHIDS,/INC.

DATED: Honolulu, Hawai'i', June 17, 2010

APPROVED AS TO FORM:

DANA S. ISHIBASHI, ESQ. Attorney for Respondent

By: Its: APPROVED AS TO FORM:

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, STATE OF

HAWAI'I

J. GĖRARD LAM

Deputy Attorney General

DARWIN L.D. CHING

Attorney for Director Department of Labor and

Industrial Relations, State of Hawai'i

APPROVED AND SO ORDERED BY

HAWALI LABOR RELATIONS BOARD:

ORDER NO. 394

DATED: June 17, 2010

JAMES B. NICHOLSON, Chair

SARAH K. HIRAKAMI, Member

NORMAN K. KATO II, Member

Department of Labor and Industrial Relations HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION 830 PUNCHBOWL STREET, ROOM 425 HONOLULU, HI 96813

Phone: (808)586-9090

FAX: (808)586-9104

Certified Number: 7006 2150 0004 4122 0907



# Citation and Notification of Penalty

To:

Volcano Orchids Inc. and its successors 2829 Awaawaloa St #C Honolulu, HI 96819

Inspection Site: 2829 Awaawaloa St #C Honolulu, HI 96819

**Inspection Number:** 313078339 (Stacy

Palmateer)

Inspection Date(s): 12/15/2009- 01/14/2010 Issuance Date:

02/03/2010 A6586

OSHCO ID: Optional Report No.: 0510

Programmed Planned

Inspection Type: Scope of Inspection:

Comprehensive Inspection

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.



Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For <u>each</u> violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification <u>must</u> be sent by you within <u>5 calendar days</u> of the abatement date indicated on the citation. For Willful and Repeat violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this ofice.

## ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Volcano Orchids Inc 2829 Awaawaloa St #C Honolulu, HI 96819

The hazard referenced in Insp Citation and How corrected:	Item	was corrected of	on	•	<u> </u>
The hazard referenced in Insp Citation and How corrected:	ltem	was corrected of	for on _	the violation identified as	·
The hazard referenced in Insp Citation and How corrected:	nem	was corrected	on	the violation identified as	•
The hazard referenced in Insp. Citation and How corrected:	Item	was corrected	on	the violation identified as	•
The hazard referenced in Insp. Citation and How corrected:	pection Number Item	was corrected	for on	the violation identified as	·
I attest that the information representatives have been info	contained in this do	cument is accur ent activities des	rate	e and that the affected employees ibed in this certification.	and their
Signature					
Typed or Printed Name					• • •

Department of Labor and Industrial Relations Hawaii Occupational Safety and Health Division



## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued o	n
02/03/2010. The conference will be held at the HIOSH office located at 830 PUNCHBOW	Ĺ
STREET, ROOM 425, HONOLULU, HI, 96813 on at	<b>-</b> •
Employees and/or representatives of employees have a right to attend an informal conference.	

Department of Labor and Industrial Relations Hawaii Occupational Safety And Health Division Inspection Number: 313078339

Inspection Dates: 12/15/2009-01/14/2010

Issuance Date: 02/03/2010



## Citation and Notification of Penalty

Company Name:

Volcano Orchids Inc

Inspection Site:

2829 Awaawaloa St #C, Honolulu, HI 96819

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1910.23(a)(8) [Refer to chapter 12-72.1, HAR] was violated because:

An opening of approximately 7 inches wide by 12 feet long was found between the upstairs mezzanine and the commercial refrigerator where employees walk to access stored items thus potentially creating a trip or fall hazard. The opening was measured at 9 feet 6 inches above the ground.

29 CFR 1910.23(a)(8) states "Every floor hole into which persons can accidently walk shall be guarded by either: (i) A standard railing with standard toeboard on all exposed sides, or (ii) A floor hole cover of standard strength and construction. While the cover is not in place, the floor hole shall be constantly attended by someone or shall be protected by a removable standard railing."

Location: Upstairs between the mezzanine edge and the commercial refrigerator

Date By Which Violation Must be Abated: Penalty:

02/22/2010

\$ 600.00

Department of Labor and Industrial Relations Hawaii Occupational Safety And Health Division Inspection Number: 313078339

Inspection Dates: 12/15/2009-01/14/2010

Issuance Date: 02/03/2010



## Citation and Notification of Penalty

Company Name:

Volcano Orchids Inc

Inspection Site:

2829 Awaawaloa St #C, Honolulu, HI 96819

Citation 1 Item 2 Type of Violation: Serious

29 CFR 1910.23(c)(1) [Refer to chapter 12-72.1-1, HAR] was violated because:

Employees walk on top of a Amerikooler commercial refrigerator (walk in cooler) to access boxes and other miscellaneous items which the company has stored. Employees walking on top of the refrigerator may be exposed to a potential fall hazard.

29 CFR 1910.23(c)(1) states "Every open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing (or the equivalent as specified in paragraph (e)(3) of this section) on all open sides except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a toeboard wherever, beneath the open sides, (i) Persons can pass, (ii) There is moving machinery, or (iii) There is equipment with which falling materials could create a hazard."

Location: On top of the large commercial refrigerator adjacent to the upstairs mezzanine

Date By Which Violation Must be Abated:

02/22/2010

Penalty:

\$ 750.00

Department of Labor and Industrial Relations Hawaii Occupational Safety And Health Division Inspection Number: 313078339

Inspection Dates: 12/15/2009-01/14/2010

Issuance Date:

02/03/2010



## Citation and Notification of Penalty

Company Name:

Volcano Orchids Inc

Inspection Site:

·2829 Awaawaloa St #C, Honolulu, HI 96819

Citation 1 Item 3 Type of Violation: Serious

29 CFR 1910.24(c) [Refer to chapter 12-72.1-1, HAR] was violated because:

A metal stairway used to access the upstairs mezzanine was found with the support legs broken, with one resting on a concrete block and another resting on an upside down plastic bucket thus creating a fall hazard.

29 CFR 1910.24(c) states "Stair strength. Fixed stairways shall be designed and constructed to carry a load of five times the normal live load anticipated but never of less strength than to carry safely a moving concentrated load of 1,000 pounds."

Location: In the warehouse adjacent to office and large warehouse door

Date By Which Violation Must be Abated:

02/22/2010

Penalty:

600.00

Citation 1 Item 4 Type of Violation: Serious

29 CFR 1910.176(b) [Refer to chapter 12-73.1-2, HAR] was violated because:

A three tier metal shelving unit used for storage was not secured to prevent it from falling over on the upstairs mezzanine.

29 CFR 1910.176(b) states "Secure storage. Storage of material shall not create a hazard. Bags, containers, bundles, etc., stored in tiers shall be stacked, blocked, interlocked and limited in height so that they are stable and secure against sliding or collapse."

Location: Upstairs mezzanine located on the edge nearest the stairway

Date By Which Violation Must be Abated:

02/22/2010

Penalty:

750.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Department of Labor and Industrial Relations Hawaii Occupational Safety And Health Division Inspection Number: 313078339

Inspection Dates: 12/15/2009-01/14/2010

Issuance Date: 02/03/2010



## Citation and Notification of Penalty

Company Name:

Volcano Orchids Inc

Inspection Site:

2829 Awaawaloa St #C, Honolulu, HI 96819

Citation 1 Item 5 Type of Violation: Serious

29 CFR 1910.305(b)(2)(i) [Refer to chapter 12-89.1] was violated because:

A light switch was found with no faceplate exposing energized parts thus potentially creating an electrocution hazard.

29 CFR 1910.305(b)(2)(i) states "All pull boxes, junction boxes, and fittings shall be provided with covers identified for the purpose. If metal covers are used, they shall be grounded. In completed installations, each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear."

Location: Upstairs mezzanine inside the storage room

Date By Which Violation Must be Abated:

Penalty:

Corrected \$ 750.00

Department of Labor and Industrial Relations Hawaii Occupational Safety And Health Division Inspection Number: 313078339

Inspection Dates: 12/15/2009 - 01/14/2010

Issuance Date: 02/03/2010



## Citation and Notification of Penalty

Company Name:

Volcano Orchids Inc

Inspection Site:

2829 Awaawaloa St #C, Honolulu, HI 96819

Citation 2 Item 1 Type of Violation: Other

29 CFR 1910.22(d)(1) [Refer to chapter 12-72.1, HAR] was violated because:

Area's used for storage above the commercial refrigerator and upstairs mezzanine were not marked with approved load limit signs thus creating a cave in hazard.

29 CFR 1910.22(d)(1) states "Floor loading protection. In every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. Such plates shall not be removed or defaced but, if lost, removed, or defaced, shall be replaced by the owner or his agent."

Location: Above the commercial refrigerator and on the upstairs mezzanine

Date By Which Violation Must be Abated:

02/22/2010

Penalty:

\$ 0.00

Department of Labor and Industrial Relations Hawaii Occupational Safety And Health Division Inspection Number: 313078339

Inspection Dates: 12/15/2009-01/14/2010

Issuance Date: 02/03/2010



## Citation and Notification of Penalty

Company Name:

Volcano Orchids Inc

Inspection Site:

2829 Awaawaloa St #C, Honolulu, HI 96819

Citation 2 Item 2 Type of Violation: Other

29 CFR 1910.132(d)(1) [Refer to Chapter 12-64.1, HAR] was violated because:

A hazard assessment was not performed of the workplace to determine what hazards are present or are likely to be present, to select which type of personal protective equipment should be provided to employees.

29 CFR 1910.132(d)(1) states "The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall: (i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment; (ii) Communicate selection decisions to each affected employee; and (iii) Select PPE that properly fits each affected employee."

Location: Warehouse- spraying flowers

Date By Which Violation Must be Abated:

02/22/2010

Penalty:

0.00

Department of Labor and Industrial Relations Hawaii Occupational Safety And Health Division Inspection Number: 313078339

Inspection Dates: 12/15/2009 - 01/14/2010

Issuance Date: 02/03/2010



## Citation and Notification of Penalty

Company Name:

Volcano Orchids Inc

Inspection Site:

2829 Awaawaloa St #C, Honolulu, HI 96819

Citation 2 Item 3 Type of Violation: Other

29 CFR 1910.1200(e)(1) [Refer to Chapter 12-203.1, HAR] was violated because:

The employer did not establish or implement a written hazard communication program (i.e. creating and maintaining a written program with all of the required elements per the standard and providing information and training to employee's).

29 CFR 1910.1200(e)(1) states "Employers shall develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following: (i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and (ii)The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas."

Location: Warehouse- spraying flowers

Date By Which Violation Must be Abated: Penalty:

02/22/2010

\$ 0.00

Department of Labor and Industrial Relations Hawaii Occupational Safety And Health Division Inspection Number: 313078339

Inspection Dates: 12/15/2009-01/14/2010

Issuance Date:

02/03/2010



## Citation and Notification of Penalty

Company Name:

Volcano Orchids Inc

Inspection Site:

2829 Awaawaloa St #C, Honolulu, HI 96819

Citation 2 Item 4 Type of Violation: Other

29 CFR 1910.1200(h)(1) [Refer to chapter 12-203.1, HAR] was violated because:

Employee's required to use chemicals, including but not limited to Design Master-Colortool Floral Spray Paint containing acetone, isobutyl acetate, and 2-butoxyethanol, when spraying flowers were not provided hazard communication training as to the requirements of the standard.

29 CFR 1910.1200(h)(1) states "Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of initial assignment, and whenever a new physical or health hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and material safety data sheets."

Location: Warehouse- spraying flowers

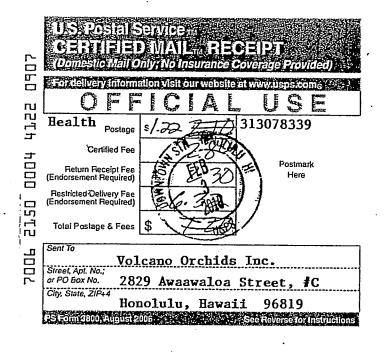
Date By Which Violation Must be Abated:

02/22/2010

Penalty:

0.00

Director



7	7/24/10				
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY				
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  Print your name and address on the reverse so that we can return the card to you.  Attach this card to the back of the malipiece, or on the front if space permits.  1. Article Addressed to: 313078339  Mr. Pat Middleton, President Volcano Orhicds Inc. 2829 Awaawaloa Street, #C Honolulu, Hawaii 96819	B Agent  Addressee  B. Received by (Printed Name)  C. Date of Delivery  D. Is delivery address different from item 1?  If YES, enter delivery address below:				
	3. Service Type  Control Mail				
	4. Restricted Delivery? (Extra Fee)				
2. Article Number (Transfer from service label)	2150 0004 4122 0907				
PS Form 3811, February 2004 Domestic Ret	Domestic Return Receipt 102595-02-M-1540				

Department of Labor and Industrial Relations HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION 830 PUNCHBOWL STREET, ROOM 425 HONOLULU, HI 96813

## SUMMARY OF PENALTIES

Company Name:

Volcano Orchids Inc

Inspection Site:

2829 Awaawaloa St #C, Honolulu, HI 96819

**Issuance Date:** 

02/03/2010

Summary of Penalties for Inspection Number 313078339

 Citation 1, Serious
 = \$ 3,450.00

 Citation 2, Other
 = \$ 0.00

 TOTAL PENALTIES
 = \$ 3,450.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the <u>inspection number</u> and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.